

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to criminal history background checks and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 50, “Health Care Facilities Administration,” Chapter 51, “Hospitals,” Chapter 58, “Nursing Facilities,” and Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104, 135B.7, 135C.14, 231B.2, 231C.3 and 231D.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 135B.34, 135C.33, 231B.2(8), 231C.3(9) and 231D.14 and 2020 Iowa Acts, Senate File 2299.

Purpose and Summary

The proposed amendments implement changes made to Iowa Code chapters 135B and 135C resulting from the enactment of 2020 Iowa Acts, Senate File 2299. The legislation establishes a process for provisional employment of employees and students of hospitals, health care facilities, assisted living programs, elder group homes, and adult day services upon the completion of a comprehensive criminal background check; defines “comprehensive criminal background check”; and sets forth the conditions under which such employment is permitted.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 5, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of “Comprehensive preliminary background check” in subrule **50.9(1)**:

“Comprehensive preliminary background check” means a criminal history check of all states in which the applicant has worked or resided over the seven-year period immediately prior to submitting an application for employment or participation in a certified nurse aide training program that is conducted by an approved third-party vendor.

ITEM 2. Amend subrule 50.9(3) as follows:

50.9(3) Requirements for employer prior to employing an individual. Prior to employment of a person in a facility, the facility shall ~~request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state~~ complete the background check requirements set forth below.

a. *Informing the prospective employee.* A facility shall ask each person seeking employment by the facility, “Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions, in this state or any other state?” In addition, the person shall be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted. (I, II, III)

b. *Conducting a background check.* The facility ~~may~~ shall either request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state, or access the single contact repository (SING) to perform the required background check. If the SING is used, the facility shall submit the person’s maiden name, if applicable, with the background check request. ~~If the SING is not used, the facility must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.~~ (I, II, III)

c. *If a person being considered for employment has been convicted of a crime.* If a person being considered for employment in a facility has been convicted of a crime under a law of any state, ~~the department of public safety shall notify the facility that upon the request of the facility~~ shall request that the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the facility. (I, II, III)

d. *If a person being considered for employment has a record of founded child or dependent adult abuse.* ~~If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a facility has a record of founded child or dependent adult abuse under a law of any state, the department of human services shall notify the facility that upon the request of the facility~~ shall request that the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person’s employment in the facility. (I, II, III)

e. Employment pending evaluation. ~~The facility may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment. The facility may provisionally employ a person prior to completion of the required record check and evaluation by the department of human services, as applicable, subject to all of the following:~~

~~(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;~~

~~(2) The person does not have a record of founded child or dependent adult abuse;~~

~~(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and~~

~~(4) The facility has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the person's employment. (I, II, III)~~

~~(1) The facility shall have accessed SING to perform the required record check and be awaiting results from SING or awaiting evaluation by the department of human services, as applicable;~~

~~(2) If applicable, the facility shall request an evaluation by the department of human services in accordance with paragraph 50.9(3) "c" or "d" within 30 days of receipt of the SING record check results;~~

~~(3) The facility shall have utilized an approved third-party vendor to perform a comprehensive preliminary background check;~~

~~(4) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, the crime does not constitute a felony as defined in Iowa Code section 701.7 and is not a crime specified pursuant to Iowa Code chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to Iowa Code section 726.3, 726.7, or 726.8;~~

~~(5) The comprehensive preliminary background check shall have determined that the person being considered for employment does not have a record of founded child abuse or dependent adult abuse, or, if the person being considered for employment does have a record of founded child abuse or dependent adult abuse, subrule 50.9(8) is applicable; and~~

~~(6) The provisional employment may continue until such time as the required record check through SING and evaluation by the department of human services, as applicable, are completed. (I, II, III)~~

ITEM 3. Amend subrule 50.9(5) as follows:

50.9(5) *Employment prohibition.* ~~A~~ Except as provided in paragraph 50.9(3) "e," a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility unless an evaluation has been performed by the department of human services. (I, II, III)

ITEM 4. Amend subrule 50.9(12) as follows:

50.9(12) *Certified nurse aide training program students.* Prior to a student's beginning or returning to a certified nurse aide training program, the program shall ~~request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student~~ either request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state, or access the SING to perform the required background check.

a. Prohibition of involvement in clinical education. ~~If~~ Except as provided in paragraph 50.9(1) "b," if a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. The evaluation shall be performed upon request of the certified nurse aide training program.

b. Involvement in clinical education component pending evaluation. ~~The training program may allow the student's participation in the clinical education component for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the student's participation in the clinical education~~

~~component. The training program may provisionally allow the student's participation in the clinical education component of the certified nurse aide training program pending completion of the required record check and evaluation by the department of human services, as applicable, subject to all of the following:~~

~~(1) The student's clinical education component of the training program involves children or dependent adults but does not involve the operation of a motor vehicle;~~

~~(2) The student does not have a record of founded child or dependent adult abuse;~~

~~(3) The student has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and~~

~~(4) The training program has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the student's involvement in the clinical education component.~~

~~(1) The training program shall have accessed SING to perform the required record check and be awaiting results from SING or awaiting evaluation by the department of human services, as applicable;~~

~~(2) If applicable, the training program shall request an evaluation by the department of human services in accordance with paragraph 50.9(12) "a" within 30 days of receipt of the SING record check results;~~

~~(3) The training program shall have utilized an approved third-party vendor to perform a comprehensive preliminary background check;~~

~~(4) If the comprehensive preliminary background check determines that the student being considered for participation has been convicted of a crime, the crime does not constitute a felony as defined in Iowa Code section 701.7 and is not a crime specified pursuant to Iowa Code chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to Iowa Code section 726.3, 726.7, or 726.8;~~

~~(5) The comprehensive preliminary background check shall have determined that the student does not have a record of founded child abuse or dependent adult abuse, or, if the student does have a record of founded child abuse or dependent adult abuse, subrule 50.9(8) is applicable; and~~

~~(6) The provisional participation may continue until such time as the required record check through SING and evaluation by the department of human services, as applicable, are completed.~~

~~c. to e. No change.~~

ITEM 5. Amend rule ~~481—50.9(135C)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 135C.14 and section 135C.33 ~~as amended by 2013 Iowa Acts, Senate File 347.~~

ITEM 6. Adopt the following new definition of "Comprehensive preliminary background check" in subrule **51.41(1)**:

"Comprehensive preliminary background check" means a criminal history check of all states in which the applicant has worked or resided over the seven-year period immediately prior to submitting an application for employment that is conducted by an approved third-party vendor.

ITEM 7. Amend subrule 51.41(2) as follows:

51.41(2) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a hospital, the hospital shall ~~request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state~~ complete the background check requirements set forth below.

a. No change.

b. *Conducting a background check.* The hospital ~~may~~ shall either request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state, or access the single contact repository (SING) to perform the required background check. If the SING is used, the hospital shall submit the person's maiden name, if applicable, with the background check request. ~~If SING is not used, the hospital must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.~~

c. *If a person considered for employment has been convicted of a crime.* If a person being considered for employment in a hospital has been convicted of a crime under a law of any state, ~~the department of public safety shall notify the hospital that upon the request of the hospital shall request that the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.~~

d. *If a person considered for employment has a record of founded child abuse or dependent adult abuse.* If a ~~department of human services child or dependent adult abuse record check shows that a person being considered for employment in a hospital has a record of founded child or dependent adult abuse under a law of any state, the department of human services shall notify the hospital that upon the request of the hospital shall request that the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the hospital.~~

e. *Employment pending evaluation.* ~~The hospital may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person's employment. The hospital may provisionally employ a person prior to completion of the required record check and evaluation by the department of human services, as applicable, subject to all of the following:~~

~~(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;~~

~~(2) The person does not have a record of founded child or dependent adult abuse;~~

~~(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2, subsection 1; and~~

~~(4) The hospital has requested an evaluation to determine whether the crime warrants prohibition of the person's employment.~~

(1) The hospital shall have accessed SING to perform the required record check and be awaiting results from SING or awaiting evaluation by the department of human services, as applicable;

(2) If applicable, the hospital shall request an evaluation by the department of human services in accordance with paragraph 51.41(2) "b" or "c" within 30 days of receipt of the SING record check results;

(3) The hospital shall have utilized an approved third-party vendor to perform a comprehensive preliminary background check;

(4) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, the crime does not constitute a felony as defined in Iowa Code section 701.7 and is not a crime specified pursuant to Iowa Code chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to Iowa Code section 726.3, 726.7, or 726.8;

(5) The comprehensive preliminary background check shall have determined that the person being considered for employment does not have a record of founded child abuse or dependent adult abuse, or, if the person being considered for employment does have a record of founded child abuse or dependent adult abuse, subrule 51.41(6) is applicable; and

(6) The provisional employment may continue until such time as the required record check through SING and evaluation by the department of human services, as applicable, are completed.

f. No change.

ITEM 8. Amend subrule 51.41(3) as follows:

51.41(3) *Employment prohibition.* ~~A~~ Except as provided in paragraph 51.41(2) "e," a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital unless an evaluation has been performed by the department of human services.

ITEM 9. Amend rule ~~481—~~**51.41(135B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 135B.7 and 135B.34 and ~~2013 Iowa Acts, Senate File 347~~ 2020 Iowa Acts, Senate File 2299.

ITEM 10. Amend subrule 58.11(3) as follows:

58.11(3) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 ~~as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C)~~ related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 11. Adopt the following new definition of “Comprehensive preliminary background check” in subrule **67.19(1)**:

“*Comprehensive preliminary background check*” means a criminal history check of all states in which the applicant has worked or resided over the seven-year period immediately prior to submitting an application for employment that is conducted by an approved third-party vendor.

ITEM 12. Amend subrule 67.19(3) as follows:

67.19(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a program, the program shall ~~request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state~~ complete the background check requirements set forth below.

a. No change.

b. *Conducting a background check.* The program shall either request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks of the person in this state, or may access the single contact repository (SING) to perform the required background check. If the SING is used, the program shall submit the person’s maiden name, if applicable, with the background check request. ~~If SING is not used, the program must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.~~

c. *If a person considered for employment has been convicted of a crime.* If a person being considered for employment in a program has been convicted of a crime under a law of any state, ~~the department of public safety shall notify the program that upon the request of the program~~ shall request that the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the program.

d. *If a person considered for employment has a record of founded child abuse or dependent adult abuse.* ~~If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a program has a record of founded child or dependent adult abuse under the law of any state, the department of human services shall notify the program that upon the request of the program shall request that the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the program.~~

e. *Employment pending evaluation.* ~~The program may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person’s employment. The program may provisionally employ a person prior to completion of the required record check and evaluation by the department of human services, as applicable, subject to all of the following:~~

~~(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;~~

~~(2) The person does not have a record of founded child or dependent adult abuse;~~

~~(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2, subsection 1; and~~

~~(4) The program has requested an evaluation to determine whether the crime warrants prohibition of the person’s employment.~~

(1) The program shall have accessed SING to perform the required record check and be awaiting results from SING or awaiting evaluation by the department of human services, as applicable;

(2) If applicable, the program shall request an evaluation by the department of human services in accordance with paragraph 67.19(3) “c” or “d” within 30 days of receipt of the SING record check results;

(3) The program shall have utilized an approved third-party vendor to perform a comprehensive preliminary background check;

(4) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, the crime does not constitute a felony as defined in Iowa Code section 701.7 and is not a crime specified pursuant to Iowa Code chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to Iowa Code section 726.3, 726.7, or 726.8;

(5) The comprehensive preliminary background check shall have determined that the person being considered for employment does not have a record of founded child abuse or dependent adult abuse, or, if the person being considered for employment does have a record of founded child abuse or dependent adult abuse, subrule 67.19(8) is applicable; and

(6) The provisional employment may continue until such time as the required record check through SING and evaluation by the department of human services, as applicable, are completed.

ITEM 13. Amend subrule 67.19(5) as follows:

67.19(5) *Employment prohibition.* ~~A~~ Except as provided in paragraph 67.19(3) “e,” a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a program unless an evaluation has been performed by the department of human services.

ITEM 14. Amend rule ~~481—67.19(135C,231B,231C,231D)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 231B.2(1), 231C.3(1), 231D.2(2), and 135C.33 and ~~2013 Iowa Acts, Senate File 347~~ 2020 Iowa Acts, Senate File 2299.